

Decision 05-01-058 January 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion to Establish Consumer Rights and
Consumer Protection Rules Applicable to All
Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

ORDER MODIFYING DECISION 04-05-057

The Commission adopted D.04-05-057 ("Decision") on May 27, 2004. We remain committed to ensuring that California continues as a national leader in consumer protection for service provided by California's telecommunications carriers. However, we are mindful that viable consumer protection occurs only with a structure that can be reasonably implemented, adequately enforced, and remain viable given today's rapidly changing telecommunications technologies and industry structure.

In order to address these issues, we stay the Decision to allow adequate time to address implementation issues, to ensure that California's consumer protection structure will be viable and enforceable, and to consider a broader reexamination of policy issues in the Decision. This stay will also allow the Commissioner time to address issues raised by recently filed Petitions for Modification of the Decision.

Carriers are Experiencing Significant Difficulties in Implementing the Decision

Beginning last fall, a total of 50 letters have been received from 45 carriers requesting extended time to comply with various Rules and subparts since adoption of G.O. 168 on May 27, 2004. By the authority extended to him in Rule 48(b) of the Commission Rules of Practice and Procedure, the Executive

Director has granted 21 requests for extensions thus far, some that will be effective until January 2006. The Executive Director previously granted a 30-day extension from December 6, 2004 to January 5, 2005 and renewed it to February 4, 2005 for certain carriers, in order to allow staff to analyze carefully and thoroughly each of these requests. On January 3, 2005, the Executive Director gave these carriers an additional extension of time to April 4, 2005. That letter is appended to this order as Attachment A.

Substantial Changes to Complex Information Systems Are Underway

The carriers are requesting this added time to make substantial and complex changes to carrier billing systems, computer systems or contracts for vendor services where the carrier has limited control over the implementation schedule. Most carriers' billing systems are national; consequently, carriers indicate that the modifications needed to enable California-specific systems for billing, interest rates, bill format, receipts, contracts, confirmation and disconnection notices normally take twelve to eighteen months to plan, develop specifications, write code, test for accuracy and maintain quality assurance.

Carriers Are Merging With or Acquiring Other Carriers

Some carriers face the additional complexity of system integration due to merger with or acquisition of other companies. Changes to billing and computer systems that are already in progress as a result of planned mergers makes the implementation schedule in the Decision more difficult to achieve. Other, smaller carriers have indicated that they lack scale economies to implement the billing or computer changes cost-effectively. Some have indicated that they may be forced to leave the California market, if they are not granted a lengthy extension or permanent waiver of certain provisions of the Rules.

In particular, two carriers have filed motions seeking waivers that would exempt them from compliance with various provisions of the Rules they contend are particularly burdensome for them. A third carrier has stated that it intends to seek a waiver of another rule, and has indicated that it may withdraw from the California market if its forthcoming waiver request is not granted. While the Executive Director does not have the authority to waive any provision of G.O. 168, or to exempt any carrier from compliance with the Rules, we have that authority, and may grant it in the course of addressing the complexities we have imposed on carriers working to implement G.O. 168.

Carriers Have Initiated Litigation to Challenge the Rules

Carriers have also instituted litigation challenging the Rules. Although we rejected the carriers' legal challenges in D.04-10-013 and denied their Applications for Rehearing, recent actions by the Eighth Circuit Court of Appeals and statements by the FCC warrant further consideration by the Commission. In particular, in connection with a federal court challenge to a Minnesota statute that imposes limits on contractual changes similar to those found in Rule 8(b), the FCC recently filed an *amicus* brief stating the FCC's position that such limitations constitute impermissible state regulation of wireless rates and are preempted under federal law. Three pending requests for extension under Rule 48(b) relate to the implementation of Rule 8(b).

Review of the Rules, Particularly Regarding Implementation, is Appropriate and a Stay Pending Review is Warranted

In the Decision, the Commission authorized the Executive Director to approve requests for extensions of time pursuant to Rule 48 of this Commission's Rules of Practice and Procedure. The Executive Director has received a total of 50 extension requests from 45 carriers. The majority of these requests sought

extensions for provisions of GO 168 that related to complex changes to billing systems and computer systems. Based on the volume of extension requests, on January 3, 2005 the Executive Director granted a blanket extension of time until April 4, 2005 for all carriers that submitted requests.

In the Decision we stated:

We are also concerned that the Rule 48 exemptions could result in great variation in applicability of rules among carriers. If several carriers request an extension of time to implement the same rule, the Commission shall consider consolidating and treating these extension requests as a petition to modify this decision, and require a Commission vote before the requests may be approved in full or in part. (D.04-05-057, slip op. pg. 148.)

In order to maintain a level playing field for all carriers, by this Decision we expand this extension of time to all carriers covered by GO 168. In addition, we suspend the portions of the rules not covered by the Executive Director's extension, in order to allow adequate consideration of pending petitions for modification.

In no way does this extension of time impact the Commission's enforcement of the existing interim "Cramming Rules" (Rules Governing Billing for Non-Communications-Related Charges) set forth in D.01-07-030, nor the existing "Slamming Rules" (Final Opinion on Rules Designed to Deter Slamming, Cramming and Sliding) set forth in D.00-03-020. We are committed to continuing our ongoing efforts of enforcing the Cramming and Slamming rules previously adopted by this Commission.

Our stay of the Decision is not open-ended. We intend to act expeditiously to address the Petitions for Modification, implementation issues, and other matters affecting the structure for consumer protection in California. The stay shall be effective until we issue a new decision adopting a consumer protection

structure and shall be of sufficient duration to allow an adequate implementation period. In our decision, which we intend to issue no later than the end of this year, we will specify clearly the effective date of the new consumer protection structure, and the termination date of the stay.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

Comments on Draft Decision

The draft decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Rule 77.7(f)(9) of the Rules of Practice and Procedure, which permits the Commission to reduce the comment period for reasons of public necessity. Comments were filed by California Associations of Competitive Telephone Companies, Wireline Group, California Small Business Roundtable, Disability Rights Advocates, Greenlining Institute, Cingular Wireless LLC, The Utility Reform Network and U.S. Cellular, and the draft decision was revised accordingly.

Findings of Fact

1. Many carriers continue to experience significant difficulties in implementing G.O. 168.
2. These carriers are making changes to complex, nationwide information systems for the benefit of consumers in California.
3. These problems are exacerbated for carriers that are acquiring or merging with other carriers.
4. Some carriers have requested waivers and exemptions from the rules; if not granted, carriers state they may leave the California market.

5. Other carriers have initiated litigation in federal and state court to challenge the rules.

6. Processes required to test the adequacy of changes we have imposed on carriers may provoke failures of systems that support critical services to customers, including billing and provisioning of telephone service. This condition constitutes a public necessity to reduce the normal comment period.

Conclusion of Law

1. D.04-05-057 should be stayed to prevent harm to carriers and consumers.

O R D E R

IT IS ORDERED that Decision 04-05-057 is stayed until further action by this Commission.

This order is effective today.

Dated January 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
SUSAN P. KENNEDY
DIAN GRUENEICH
Commissioners

I will file a dissent.

/s/ GEOFFREY F. BROWN
Commissioner

I reserve the right to file a concurrence.

/s/ SUSAN P. KENNEDY
Commissioner

I reserve the right to file a concurrence.

/s/ DIAN GRUENEICH
Commissioner

ATTACHMENT A

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 3, 2005

Harris R. Anthony
VP and General Counsel
BELLSOUTH
400 Perimeter Center, Suite 400
Atlanta, GA 30346

Dear Mr. Anthony:

This letter responds to all requests on behalf of telecommunications carriers requesting extended time under Rule 48(b) of the CPUC's Rules of Practice and Procedure to comply with certain requirements of Decision (D.) 04-05-057. That decision promulgated the Commission's new General Order 168, Rules Governing Telecommunications Consumer Protection. The decision required compliance with all G.O. 168 Rules and subparts within 180 days, no later than December 6, 2004, with the exception of those Rules requiring systemic changes in computer systems and billing systems or extensive use of outside contractors. Specifically, carriers have until July 31, 2005 to implement Rules 3(m), 5(c), 5(d), 6(j), and 7(d).

D. 04-05-057 established a process whereby carriers could request extended time to comply with specific rules or subparts by submitting a request in writing to the Executive Director. To obtain approval for the request, the carrier must show convincingly that it:

1. Has demonstrated that the delay was unavoidable;
2. Has tailored the request as narrowly as possible to encompass only that part of the order and general order for which it is truly needed;
3. Has submitted a reasonable plan and timetable for achieving compliance within the requested time extension;
4. Has taken all feasible steps to lessen the effects on customers of the requested delay; and
5. Is able to demonstrate good faith compliance with all other parts of the order and general order.

A total of 50 letters have been received from 45 carriers requesting extended time to comply with various Rules and subparts since adoption of G.O. 168 on May 27, 2004. After review and consideration of each request, I have granted 20 requests thus far, some that extend into December 2005. I denied two requests, because they were filed after the last day I am empowered to act

according to Rule 48(b). To date, eleven carriers have been instructed to submit further evidence supporting their requests for extended time. I previously granted a 30-day extension from December 6, 2004 to January 5, 2005 for certain carriers in order to allow staff to analyze carefully and thoroughly each of the many requests that were presented to me. I granted an additional 30-day extension from January 5, 2005 to February 4, 2005 to allow for further analysis.

The volume of extension requests received indicates that many carriers are not able to comply with all subparts of the Rules within the required 180 days as specified by G.O. 168. Twenty-three remaining carriers state that they will be unable to comply with specific Rules within the two successive 30-day extensions of time I have already granted. As of January 3, 2005, I have not yet fully reviewed all of the pending requests from those remaining carriers, who are requesting from 3 to 16 months extended time to comply with 26 specific subparts of the Rules.

Virtually all of the rules for which extended time has been requested involve substantial and complex changes to carrier billing systems, computer systems or contracts for vendor services where the carrier has limited control over the implementation schedule. Additionally, most carriers' billing systems are national and carriers requesting time extensions indicate that the modifications necessary for development of California-specific systems for billing, interest rates, bill format, receipts, contracts, confirmation and disconnection notices normally take twelve to eighteen months to plan, develop specifications, write code, test for accuracy and maintain quality assurance.

Certain carriers face the additional complexity of system integration due to merger with or acquisition of other companies. Changes to billing and computer systems that are already in progress as a result of planned mergers makes the implementation schedule in D.04-05-057 more difficult to achieve. Other, smaller carriers have indicated that they do not have the economy of scale to implement the billing or computer changes cost-effectively and have indicated that they may be forced to leave the California market if not granted a lengthy extension or permanent waiver of certain provisions of the Rules.

It is clear from the volume and nature of the extension requests that compliance with key provisions of G.O. 168 related to billing and computer systems will be greatly uneven among carriers and that there is significant risk of consumer harm if major changes are made to billing systems without adequate time for testing. Additionally, consumers will be harmed if carriers are unable to continue offering service as a result of not receiving an extension of time to comply.

In addition, two carriers (Cricket Communications and Time Warner Telecom of California) have filed motions seeking waivers that would exempt them from compliance with various provisions of the Rules they contend are particularly burdensome for them. A third carrier, U.S. Cellular, has stated that it intends to seek a waiver of another rule, and has indicated that it may withdraw from the California market if its forthcoming waiver request is not granted. There is no provision in D.04-05-057 that allows the Executive Director to waive any provision of G.O. 168 or provide exemptions from compliance with the Rules. Each of these carriers has sought extensions of time pursuant to Rule 48(b) pending the resolution of their waiver requests.

Carriers have also instituted litigation challenging the Rules. Although the CPUC rejected the carriers' legal challenges in D.04-10-013, denying their Applications for Rehearing, recent actions by the Eighth

Circuit Court of Appeals and statements by the FCC may warrant further consideration by the Commission.

The volume of extension requests, the requests for waivers, and the recent legal developments raise broad applicability and policy issues. The CPUC may wish to consider modifying D.04-05-057. That Decision states that the CPUC shall consider a broader re-examination of policy issues based on the Rule 48(b) requests:

“We are also concerned that the Rule 48 exemptions could result in great variation in applicability of rules among carriers. If several carriers request an extension of time to implement the same rule, the Commission shall consider consolidating and treating these extension requests as a petition to modify this decision, and require a Commission vote before the requests may be approved in full or in part.”

To preserve the CPUC’s ability to consider possible modification of the Rules in light of the policy issues mentioned above, I am, in accordance with the CPUC’s Rules of Practice and Procedure Rule 48(b), granting a 90-day extension until April 4, 2005 for all carriers whose requests for extended time under Rule 48(b) of the CPUC’s Rules of Practice and Procedure to comply with the following Rules I have not yet acted on:

1(b), 1(e)(1), 1(f)(6), 1(h)
2(c), 2(d)
3(c), 3(d), 3(e), 3(f)
4(c), 4(d)
5(b), 5(c)
6(e), 6(f), 6(g), 6(h), 6(i), 6(k)
8(b), 8(e)
9(a), 9(e)
11(a), 11(d)

This extension is prompted by requests for extensions of time to comply with Ordering Paragraph 2 of the Decision presented to me over several months and the important issues presented in those requests and in subsequent discussions between carriers and staff. If additional time is needed for compliance with the Rules specified above, carriers may submit requests for additional extensions as delineated in D. 04-05-057. This extension lengthens the compliance period only for those parts of the Rules listed above. The compliance dates for all other Rules and subparts in D. 04-05-057 remain in effect.

Yours truly,

/s/ Steve Larson
Steve Larson
Executive Director

(END OF ATTACHMENT A)